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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 JUAN ALEJO-DIAZ,

12 Defendant.

13 2:12-cr-00047-KJD -VCF-1

14 **ORDER**

15 **(Motion for Dismissal of Charges #28, Motion  
16 to Strike Motion to Dismiss #29, and Motion To  
17 Dismiss Counsel and Appointment of Counsel  
#32)**

18 Before the court is defendant Alejo-Diaz's Motion For Dismissal of Charges. (#28). The  
19 government filed a Motion to Strike defendant's Motion For Dismissal of Charges. (#29).

20 Also before the court is defendant Alejo-Diaz's Motion To Dismiss Counsel and For  
21 Appointment of Alternate Counsel. (#32).

22 **A. Background**

23 An indictment was filed against defendant Alejo-Diaz on February 14, 2012. (#1). The court  
24 signed a writ of habeas corpus ad prosequendum on the same day, as defendant Alejo-Diaz was in State  
25 custody. (#5). On February 24, 2012, defendant Alejo-Diaz made his initial appearance and  
arraignment and plea. (#7). Defendant Alejo-Diaz plead not guilty, the Public Defender's Office was  
appointed to represent him (#10), and he was remanded to custody (#12). *Id.* Attorney Jonathan  
Sussman filed a notice of appearance on February 29, 2012, stating that he will serve as counsel for  
defendant Alejo-Diaz. (#13). On April 2, 2012, the court issued an order substituting Jess R. Marchese,  
Esq. as defendant Alejo-Diaz's counsel for all future proceedings. (#17). On September 18, 2012, the

26 court continued the trial until December 3, 2012. (#27).

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2       **B. Motion For Dismissal/Motion to Strike/Motion Dismiss Counsel**  
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4       Defendant Alejo-Diaz filed the motion for dismissal of charges (#28) and motion to dismiss  
5       counsel (#32) on his own behalf. In the government's motion, it asks this court to strike the defendant's  
6       motion for dismissal of charges (#28), because defendant is represented by counsel and is not permitted  
7       to file motions on his own behalf. (#29).

8       Pursuant to Local Rule IA 10-6(a), “[a] party who has appeared by attorney cannot while so  
9       represented appear or act in the case. An attorney who has appeared for a party shall be recognized by  
10       the Court and all the parties as having control of the client's case.” As Mr. Marchese is defendant's  
11       counsel of record (#17), and counsel has not filed a motion to withdraw as counsel, defendant may not  
12       file motions on his own behalf. *See* LR IA 10-6(a). The instant motion for dismissal of charges (#28)  
13       and motion to dismiss counsel (#32) are improper and stricken.

14       Accordingly and for good cause shown,

15       IT IS FURTHER ORDERED that the government's Motion to Strike the Motion to Dismiss  
16       (#29) is GRANTED.

17       IT IS FURTHER ORDERED that defendant's Motion For Dismissal (#28) and Motion To  
18       Dismiss Counsel and For Appointment of Alternate Counsel (#32) are STRICKEN.

19       DATED this 9th day of October, 2012.



20       CAM FERENBACH  
21       UNITED STATES MAGISTRATE JUDGE  
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